IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 5645 of 1999

Between:

Gunthula Mohana Raof son of Satyam

....PETITIONER

AND

1. The Government of A.P. rep. by its Secretary,Social Welfare Department, Secretariat Buildings, Hyderabad,.
2. The District Collector, W.G.Dist,Eluru
3. The Revenue Divisional Officer,Kovvur Division, Kovvur, W.G.Dist.
4. The Mandal Revenue Officer, iragavaram Mandald,W.G.Dist.
5. The Executive Officer, Malleswara Swamy emple, East Vipparru, Irragavaram Mandal, W.G.Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue order or direction more particularly one in the nature of writ or Mandamus declaring the action of the respondent authorities in issuing 4(1) notification dt.21-08-98 andSec.6 declaration dt.22-9-98 under Land Acquisition Act, proposing to acquire an extent of Ac.1.36 cents, in R.S.No.186 and 190/1A o East Vipparru, Iragavaram Mandal, West Godavari District which is under the cultivation of the petitioner, as illegal, arbitrary, unconstitutional, contrary to the provisions of G.O.Ms.no.456, dt.29-9-95, violative of principle of natural justice and hence null and void.

Counsel for the Petitioner: MR. G.KRISHNA MURTHY

Counsel for the Respondent Nos.1 to 4.: GP FOR LAND ACQUISITION
Counsel for the Respondent No.5:- None appeared.

The Court made the following :

ORDER:

This Writ Petition is filed, questioning the proceedings initiated under the provisions of the Land Acquisition Act, 1894, notifying the land of the petitioner, admeasuring Ac.1.36 cents for the purpose of allotment of house-sites to the weaker sections.

Notification under Section 4(1) of the Land Acquisition Act, 1894, dated 13-8-1998 was published in the gazettee on 21-8-1998. The said notification was issued by invoking urgency clause under Section 17 of the Land Acquisition Act, 1894, by dispensing enquiry as contemplated under Section 5-A of the Land Acquisition Act, 1894. Subsequently, declaration under Section 6 of the Land Acquisition Act was published on 22-9-1998.

The only ground urged by the learned Counsel for the petitioner is that the respondents having invoked the urgency clause, failed to take possession of the land in question within a period of 90 days, as contemplated in the Land Acquisition Act, 1894; as such, Section 5 of the Land Acquisition Act, 1894 will come into operation, in view of the provisions under Section 17(5)(b) of the Land Acquisition Act, 1894.

In this case, notification under Section 4(1) of the Land Acquisition Act, 1894 was published on 21-8-1998 and declaration under Section 6 of the Act was published on 22-9-1998. At the stage of admission, this Court has passed interim orders on 1-4-1999.

In the counter affidavit filed on behalf of the respondents, it is stated that possession of the notified land could not be taken, for non-availability of required funds, for payment of compensation.

In this case, it is not in dispute that notification was issued to acquire the land in question by invoking urgency clause and enquiry as contemplated under Section 5-A of the Land Acquisition Act, 1894 was dispensed with. Admittedly, possession was not taken with in a period of 90 days. By operation of Section 17(5)(b) of the Land Acquisition Act, 1894, necessarily, enquiry under Section 5-A of the Act has to be conducted. In that view of the matter, declaration under Section 6 of the Land Acquisition Act, 1894, dated 22-9-1998 is hereby quashed. It is open for the respondents to conduct enquiry under Section 5-A of the Land Acquisition Act, 1894 and take steps accordingly. It is left open to the petitioner to raise all such objections in the enquiry under Section 5-A of the Land Acquisition Act, 1894 with regard to proposed acquisition.

Accordingly, the Writ Petition is allowed in part to the extent indicated above. No costs.

JUSTICE R. SUBHASH REDDY

DATED: 2-7-2004

Tsnr/Msnr.

That Rule Nisi has been made absolute as above.

Witness theHon'ble Sri Devinder Gupta, the Chief justice on this Friday the

second day of July Two thousand and four.

To

1. The Secretary, Social Welfare Department, Secretariat Buildings, Hyderabad,.
2. The District Collector, W.G.Dist, Eluru
3. The Revenue Divisional Officer, Kovvur Division,Kovvur, W.G.Dist.
4. The Mandal Revenue Officer, iragavaram Mandald, W.G.Dist.
5. **The Executive Officer, Malleswara Swamy Temple,**

East Vipparru, Irragavaram Mandal, W.G.Dist

6. **Two CCs to Government Pleader for Land Acquisition, High Court of A.P, Hyderabad (OUT)**

7. Two C.D.Copies